

Remarks

The above Amendments and these Remarks are in reply to the Office Action mailed December 5, 2006.

Claims 5-7, 14-16, 21-29, 34-36, 40 and 41 were pending in the Application prior to the outstanding Office Action. In the Office Action, the Examiner allowed claims 21-29, rejected claims 5-7, 14-16, 34-36, 40 and 41. The present Response amends claims 5-7, 14-16, 21, and 34-36 and add claims 46, 47 and 48, leaving for the Examiner's present consideration claims 5-7, 14-16, 21-29, 34-36, 40, 41, 46, 47 and 48. Reconsideration of the rejections is requested.

I. REJECTION UNDER 35 U.S.C. §103(A) OVER *LAHILLE ET AL.* (U.S. PAT. NO. 5,554,191)

The Examiner rejected claims 5-7, 14-16, 34-36, 40 and 41 under 35 U.S.C. §103(a) as being anticipated by *Lahille*. Applicants respectfully traverse the rejection.

The vertebral cage of *Lahille* includes oblique bearing surfaces that connect at a "bridge [that] constitutes a linking portion integral with the two branches." See col. 6, lines 63-65. A screw 36 within a counterbore of the bridge is threaded through a cylindrical spreader roller 37 which is advanced along the threads by rotating the screw 36. Advancing the roller 37 forces oblique bearing surfaces 310,320 apart, bending them away from each other at a distal end of the cage, as shown in FIG. 15. However, the oblique bearing surfaces 310,320 are not "pivotably connected at a hinge" as recited in claim 5. The oblique bearing surfaces are connected by a fixed bridge, and not a hinge. Similarly, nowhere does *Lahille* teach or suggest a "spacer [that] has a hinged body having a first portion and a second portion" as recited in claim 40. The bridge of *Lahille* is not a hinged body. The bridge of *Lahille* is a monolithic structure that bends at a distal end in a manner dependent on the material properties of the vertebral cage.

Further, nowhere does *Lahille* teach or suggest "a body having a shaft extending therefrom" AND a "screw arranged generally perpendicular to the shaft and an actuatable spreading device engaging threads of the screw" as recited in claim 14. *Lahille* teaches a screw (presumably having a shaft), but not a screw perpendicular to a shaft.

Still further, nowhere does *Lahille* teach or suggest "a tissue expander associated with the spacer and adapted to assist positioning of the spacer between the spinous processes" as recited in claim 5, or "a tissue expander extending from the distal end of the shaft" as recited in claim 34. *Lahille* discloses a screw having "a stop washer 363 which is argon welded on the shank 362, for example, to prevent demounting of the spreader roller or member 37 upon excessive unscrewing of the screw 36. Alternatively, the washer 363 is replaced by a flange formed at the end of the screw threaded shank 362 by crushing and shaping." See col. 7, lines 45-50.

The washer 363 is not a tissue expander and is not adapted to assist in positioning of the vertebral cage between spinous processes.

Because *Lahille* fails to disclose all of the features of claims 5, 14, 34 and 40, *Lahille* cannot render claims 5, 14, 34, and 40 unpatentable under 35 U.S.C. 103(a). Applicants further submit that it would not have been obvious to one of ordinary skill in the art to modify the teachings of *Lahille* to render claims 5, 14, 34, and 40 unpatentable under 35 U.S.C. 103(a). Dependent claims have at least the features of the independent claims from which they depend. Therefore, claims 6, 7 (which depend from claim 5), 15, 16 (which depend from claim 14), 35, 36 (which depend from claim 34) and 41 (which depends from claim 40) cannot be unpatentable by *Lahille* under 35 U.S.C. 103(a).

II. ALLOWABLE SUBJECT MATTER

Applicants appreciate the indication that claims 21-29 are allowable over the prior art. Applicants submit that the current amendment of claim 21 does not affect the scope, and therefore the patentability of claim 21, but rather merely clarifies the language of the claim that may be deemed confusing.

III. ADDITIONAL CLAIMS

Applicants respectfully submit that newly added claims 46, 47 and 48 are allowable over the prior art.

IV. CONCLUSION

In light of the above, it is respectfully submitted that all of the claims now pending in the subject patent application should be allowable, and a Notice of Allowance is requested. The Examiner is respectfully requested to telephone the undersigned if he can assist in any way in expediting issuance of a patent.

The Commissioner is authorized to charge any underpayment or credit any overpayment to Deposit Account No. 06-1325 for any matter in connection with this response, including any fee for extension of time, which may be required.

Respectfully submitted,

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